

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID L. THOMAS, SR.

Plaintiff

DECISION AND ORDER

-VS-

09-CV-6210 CJS

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendants

This is an action brought pursuant to 42 U.S.C. § 405(g) to review the final determination of the Commissioner of Social Security (“Commissioner” or “Defendant”), which denied plaintiff David Thomas, Sr.’s (“Plaintiff”) application for disability insurance benefits. On November 5, 2009, Defendant filed a motion [#8] to remand this case to the Commissioner, on the grounds that the Administrative Law Judge (“ALJ”) committed an error of law. Specifically, Defendant states that “the ALJ relied upon vocational expert evidence which was incorrect.” (Def. Memo of Law at 1).

On December 1, 2009, the Court issued a Motion Scheduling Order [#9], which directed Plaintiff, who is proceeding *pro se*, to respond to the motion by January 22, 2010, and which scheduled oral argument for April 15, 2010. On January 26, 2010, the Court received a letter from Plaintiff, which was addressed to the Social Security Administration. The letter stated that it enclosed copies of a “reply or response” to the Motion Scheduling Order, however, no such copies were received by the Court. The letter also inquired whether Plaintiff was required to attend oral argument.

At that point, the Court had not received anything from Plaintiff that would warrant denying Defendant’s motion to remand. Additionally, the Court was concerned that the

case not be unreasonably delayed. In that regard, it seemed to be in Plaintiff's best interests to have this case remanded so that a new decision could be issued by the Commissioner as soon as possible. Accordingly, the Court issued an Order [#10], directing Plaintiff to explain, in writing, why the case should not be remanded to the Commissioner, on or before February 12, 2010, and stating that if the Court did not receive such an explanation from Plaintiff, the Court would grant Defendant's motion and remand this case for a new hearing. The Court did not receive a response from Plaintiff.

Accordingly, it is hereby

ORDERED, that this matter is remanded to the Commissioner for a new hearing pursuant to 42 U.S.C. § 405(g), sentence four. It appears that Plaintiff has been waiting several years for a resolution of this matter, therefore the Commissioner should make every effort to expedite the re-hearing of this matter.

Dated: Rochester, New York
 February 18, 2010

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge